

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Southwest Gas Corporation (U 905 G),

Complainant,

vs.

Southern California Gas Company and Pacific
Gas and Electric Company,

Defendants.

Case 05-10-033
(Filed October 31, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING CONCERNING THE JOINT
MOTION TO DISMISS OF THE SOUTHERN CALIFORNIA GAS COMPANY
AND THE PACIFIC GAS AND ELECTRIC COMPANY**

On May 1, 2006, the Southern California Gas Company (SoCalGas) and the Pacific Gas and Electric Company (PG&E) filed a joint motion to dismiss the underlying complaint. In the following discussion, the Commission explains the purpose, effect, and standard for consideration of such a motion:

“Rule 56 provides for the filing of a motion to dismiss. The effect of granting the motion to dismiss is that it ends the action with respect to the moving party. (See Decision (D.) 92-07-019, p. 3.) Although there is little in the way of Commission decisions interpreting Rule 56, one legal observer of civil procedure has noted that the purpose of a motion to dismiss in civil practice is that it is an exercise of the court's inherent power to prevent abuse of the judicial process. (5 Witkin, Cal. Procedure (3d ed. 1985) § 955, p. 389.) The courts have described this as an inherent power to prevent sham, frivolous, or vexatious causes of action, or to prevent filings that are not done in good faith or that are in disregard of established

procedural requirements, or otherwise violative of orderly judicial administration. (See *Estate of King* (1953) 121 Cal.App.2d 774; *Neal v. Bank of America* (1949) 93 Cal.App.2d 678.) The motion to dismiss in civil practice has been replaced by the motion for summary judgment procedure. (*Pianka v. California* (1956) 46 Cal.2d 208, 211-212.)

“A motion to dismiss under Rule 56 is analogous in several respects to a motion for summary judgment in civil practice. Under the motion to dismiss procedure, the Commission determines before hearing whether there are any triable issues as to any material fact. The purpose of the summary judgment procedure is also to determine whether there are any disputed issues of material fact. (Code of Civil Procedure, § 437c.) The use of the summary judgment procedure is also similar to that of a Rule 56 motion to dismiss in that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials. (*Exchequer Acceptance Corporation v. Alexander* (1969) 271 Cal.App.2d 1, 11.)

“Under the summary judgment procedure, the moving party has the burden of showing that there are no disputed facts by means of "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." The opposition to the motion must state which facts are still in dispute. (Code of Civil Procedure § 437c(b).) The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code of Civil Procedure § 437c(c).) If the parties' filings disclose the existence of a disputed issue of material fact, the motion must be denied.”¹

The moving parties, in this instance, have offered no affidavits, declarations, admissions, answers to interrogatories, or depositions to support

¹ D.94-04-082, pp.11-13.

their position. Instead, the motion rests entirely on the observation that the Complainant faced no negative impact related to the subject of the complaint during the winter of 2005-2006. The moving parties argue that this removes the central factual assertion made by the Complainant, and that there remains no case or controversy. The Complainant points out, in its May 10, 2006 response to the motion, that the initial complaint raises concerns not only about the winter of 2005-2006, but also about subsequent periods. In their answers to the complaint, SoCalGas and PG&E deny this assertion. Thus, there remain triable issues related to material facts, the moving parties have failed to meet their burden, the motion shall be denied, and the proceeding shall continue as scheduled.

IT IS RULED that:

1. The joint motion to dismiss is denied.
2. There is no interlocutory appeal of this ruling. The appropriate time for appeal begins with the issuance of a final decision in this matter.
3. The proceeding shall continue as previously scheduled.

Dated May 26, 2006, at San Francisco, California.

/s/ STEVEN WEISSMAN

Steven Weissman
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Concerning the Joint Motion to Dismiss of the Southern California Gas Company and the Pacific Gas and Electric Company on all parties of record in this proceeding or their attorneys of record.

Dated May 26, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

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